

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANITA VALLADORES, et al.,

Plaintiffs,

v.

ASHTREE APARTMENTS, LLC.,

Defendant.

Case No. 1:20-cv-01155-DAD-SAB

ORDER DENYING APPLICATION TO
PROCEED *IN FORMA PAUPERIS*
WITHOUT PREJUDICE AND REQUIRING
PLAINTIFFS TO FILE A PETITION FOR
APPOINTMENT OF A GUARDIAN AD
LITEM

(ECF No. 3)

TEN DAY DEADLINE

Anita Valladores and minors D.C. and K.C. (“Plaintiffs”) filed a complaint in this action alleging violations of the Fair Housing Act of 1968, as amended, 42 U.S.C. §§ 3601 et seq. (ECF No. 2.) Plaintiffs filed an application to proceed *in forma pauperis*, but also paid the filing fee of \$400.00. (ECF No. 3.) In order to proceed in court without prepayment of the filing fee, Plaintiffs must submit an affidavit demonstrating that they are “unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1).

Upon review of the application to proceed *in forma pauperis*, it merely states that the plaintiffs do not have sufficient funds to pay the filing fee and requests that the fee be waived. Plaintiffs’ application does not comply with section 1915(a) and the Court cannot determine that Plaintiffs are entitled to proceed *in forma pauperis* based on the application filed. Further,

1 Plaintiffs have paid the filing fee in this action and therefore the request to proceed *in forma*
2 *pauperis* would appear to be moot.

3 To the extent that the plaintiffs seek to proceed without prepayment of fees despite
4 having paid the filing fee, they will be required to complete and file an Application to Proceed in
5 District Court Without Prepaying Fees or Costs (Long Form) – AO 239.

6 Additionally, this action states it is being brought on behalf of the minors by their general
7 guardian, Anita Valladores. The Federal Rules of Civil Procedure provide that “[t]he following
8 representatives may sue or defend on behalf of a minor or an incompetent person: (A) a general
9 guardian; (B) a committee; (C) a conservator; or (D) a like fiduciary.” Fed. R. Civ. P. 17(c).
10 Pursuant to the Local Rules of the Eastern District of California, upon commencing this action
11 on behalf of a minor, “the attorney representing the minor or incompetent person shall present
12 (1) appropriate evidence of the appointment of a representative for the minor or incompetent
13 person under state law or (2) a motion for the appointment of a guardian ad litem by the Court,
14 or, (3) a showing satisfactory to the Court that no such appointment is necessary to ensure
15 adequate representation of the minor” L.R. 202(a).

16 While a parent is generally appointed as a guardian ad litem, there are situations where
17 the best interests of the minor and the interests of the parent conflict. Anthem Life Ins. Co. v.
18 Olguin, No. 1:06-CV-01165 AWI-NEW, 2007 WL 1390672, at *2 (E.D. Cal. May 9, 2007).
19 Therefore, a parent is not entitled as a matter of right to act as guardian *ad litem* for the child. Id.
20 at *2.

21 Plaintiffs shall be required to file a petition for appointment of a guardian ad litem or
22 appropriate evidence that a representative has been appointed under state law.

23 Based upon the foregoing, it is HEREBY ORDERED that:

- 24 1. Plaintiffs’ application to proceed *in forma pauperis* is DENIED without prejudice;
- 25 2. The Clerk of the Court is directed to forward an Application to Proceed in District
26 Court Without Prepaying Fees or Costs (Long Form) – AO 239 to Plaintiffs;
- 27 3. The hearing set for September 25, 2020 is VACATED;
- 28 4. Within ten days from the date of entry of this order, Plaintiffs’ counsel shall file

evidence that the representative has been appointed under state law or a petition for appointment of a guardian ad litem that meets the requirements of Rule 202; and

5 Plaintiffs are advised that failure to comply with this order may result in the issuance of sanctions, up to and including dismissal of this action.

IT IS SO ORDERED.

Dated: August 18, 2020


UNITED STATES MAGISTRATE JUDGE